

111TH CONGRESS
1ST SESSION

S. 1365

To amend the National Child Protection Act of 1993 to establish a permanent background check system.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2009

Mr. SCHUMER (for himself, Mr. ENSIGN, Mr. BAYH, Mr. VITTER, Mr. SPECTER, Mr. ISAKSON, Mr. WHITEHOUSE, and Mr. KAUFMAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the National Child Protection Act of 1993 to establish a permanent background check system.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Child Protection Im-
5 provements Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) In 2006, 61,200,000 adults (a total of 26.7
9 percent of the adult population) contributed a total

1 of 8,100,000,000 hours of volunteer service. Of
2 those who volunteer, 27 percent, or a total of
3 16,500,000 adults, dedicate their service to edu-
4 cation or youth programs.

5 (2) Assuming recent incarceration rates remain
6 unchanged, an estimated 6.6 percent of individuals
7 in the United States will serve time in prison for a
8 crime during their lifetime. The Integrated Auto-
9 mated Fingerprint Identification System of the Fed-
10 eral Bureau of Investigation maintains fingerprints
11 and criminal history records on more than
12 47,000,000 individuals, many of whom have been ar-
13 rested or convicted multiple times.

14 (3) A study released in 2002, found that, of in-
15 dividuals released from prison in 15 States in 1994,
16 an estimated 67.5 percent were rearrested for a fel-
17 ony or serious misdemeanor within 3 years. Three-
18 quarters of those new arrests resulted in convictions
19 or a new prison sentence.

20 (4) Given the large number of individuals with
21 criminal history records, and the vulnerability of the
22 population with whom human service organizations
23 work, those organizations that work with children
24 need an effective and reliable means of obtaining rel-
25 evant information about criminal histories in order

1 to determine the suitability of a potential volunteer
2 or employee.

3 (5) The large majority of Americans (88 per-
4 cent) favor granting youth-serving organizations ac-
5 cess to conviction records for screening volunteers
6 and 59 percent favor allowing youth-serving organi-
7 zations to consider arrest records when screening
8 volunteers. This was the only use for which a major-
9 ity of those surveyed favor granting access to arrest
10 records.

11 (6) Congress has previously attempted to en-
12 sure that States make Federal Bureau of Investiga-
13 tion criminal history background checks available to
14 organizations seeking to screen employees and volun-
15 teers who work with children, the elderly, and indi-
16 viduals with disabilities, through the National Child
17 Protection Act of 1993 (42 U.S.C. 5119 et seq.) and
18 the Volunteers for Children Act (Public Law 105–
19 251; 112 Stat. 1885). However, according to a June
20 2006 report from the Attorney General, these laws
21 “did not have the intended impact of broadening the
22 availability of NCPA checks.” A 2007 survey con-
23 ducted by MENTOR/National Mentoring Partner-
24 ship found that only 18 States allowed youth men-

1 toring organizations to access nationwide Federal
2 Bureau of Investigation background searches.

3 (7) Even when accessible, the cost of a criminal
4 history background check can be prohibitively expensive,
5 ranging from \$5 to \$75 for a State fingerprint
6 check, plus the Federal Bureau of Investigation fee,
7 which ranges between \$16 to \$24, for a total of between
8 \$21 and \$99 for each volunteer or employee.

9 (8) Delays in processing such checks can also
10 limit their utility. While the Federal Bureau of Investigation
11 processes all civil fingerprint requests in
12 less than 24 hours, State response times vary widely,
13 and can take as long as 42 days.

14 (9) The Child Safety Pilot Program under section
15 108 of the PROTECT Act (42 U.S.C. 5119a
16 note) revealed the importance of performing fingerprint-based
17 Federal Bureau of Investigation criminal
18 history background checks. Of 68,000 background
19 checks performed through the pilot program as of
20 May 2009, 6 percent of volunteer applicants were
21 found to have a criminal history of concern, including
22 very serious offenses such as sexual abuse of minors,
23 assault, child cruelty, murder, and serious
24 drug offenses.

1 (10) In an analysis performed on the volunteers
 2 screened in the first 18 months of the Child Safety
 3 Pilot Program, it was found that over 41 percent of
 4 the individuals with criminal histories had com-
 5 mitted an offense in a State other than the State in
 6 which they were applying to volunteer, meaning that
 7 a State-only search would not have found relevant
 8 criminal results. In addition, even though volunteers
 9 knew a background check was being performed, over
 10 50 percent of the individuals found to have a crimi-
 11 nal history falsely indicated on their application
 12 form that they did not have a criminal history.

13 (11) The Child Safety Pilot Program also dem-
 14 onstrates that timely and affordable background
 15 checks are possible.

16 **SEC. 3. BACKGROUND CHECKS.**

17 The National Child Protection Act of 1993 (42
 18 U.S.C. 5119 et seq.) is amended—

19 (1) by redesignating section 5 as section 6; and

20 (2) by inserting after section 4 the following:

21 **“SEC. 5. PROGRAM FOR NATIONAL CRIMINAL HISTORY**
 22 **BACKGROUND CHECKS FOR CHILD-SERVING**
 23 **ORGANIZATIONS.**

24 “(a) DEFINITIONS.—In this section—

1 “(1) the term ‘background check designee’
2 means the entity or organization, if any, designated
3 by or entering an agreement with the Attorney Gen-
4 eral under subsection (b)(3)(A) to carry out or assist
5 in carrying out the duties described in subsection
6 (c);

7 “(2) the term ‘child’ means an individual who
8 is less than 18 years of age;

9 “(3) the term ‘covered entity’ means a business
10 or organization, whether public, private, for-profit,
11 nonprofit, or voluntary that provides care, care
12 placement, supervision, treatment, education, train-
13 ing, instruction, or recreation to children, including
14 a business or organization that licenses, certifies, or
15 coordinates individuals or organizations to provide
16 care, care placement, supervision, treatment, edu-
17 cation, training, instruction, or recreation to chil-
18 dren;

19 “(4) the term ‘covered individual’ means an in-
20 dividual—

21 “(A) who has, seeks to have, or may have
22 unsupervised access to a child served by a cov-
23 ered entity; and

24 “(B) who—

1 “(i) is employed by or volunteers with,
2 or seeks to be employed by or volunteer
3 with, a covered entity; or

4 “(ii) owns or operates, or seeks to
5 own or operate, a covered entity;

6 “(5) the term ‘criminal history review designee’
7 means the entity or organization, if any, designated
8 by or entering an agreement with the Attorney Gen-
9 eral under subsection (b)(3)(B) to carry out or as-
10 sist in carrying out the criminal history review pro-
11 gram;

12 “(6) the term ‘criminal history review program’
13 means the program established under subsection
14 (b)(1)(B);

15 “(7) the term ‘identification document’ has the
16 meaning given that term in section 1028 of title 18,
17 United States Code;

18 “(8) the term ‘participating entity’ means a
19 covered entity that is—

20 “(A) located in a State that does not have
21 a qualified State program; and

22 “(B) approved under subsection (f) to re-
23 ceive nationwide background checks in accord-
24 ance with subsection (c) and participate in the
25 criminal history review program;

1 “(9) the term ‘qualified State program’ means
2 a program of a State authorized agency that the At-
3 torney General determines is meeting the standards
4 identified in subsection (b)(2) to ensure that a wide
5 range of youth-serving organizations have affordable
6 and timely access to nationwide background checks;

7 “(10) the term ‘open arrest’ means an arrest
8 relating to which charges may still be brought, tak-
9 ing into consideration the applicable statute of limi-
10 tations;

11 “(11) the term ‘pending charge’ means a crimi-
12 nal charge that has not been resolved through con-
13 viction, acquittal, dismissal, plea bargain, or any
14 other means;

15 “(12) the term ‘State’ means a State of the
16 United States, the District of Columbia, the Com-
17 monwealth of Puerto Rico, American Samoa, the
18 Virgin Islands, Guam, the Commonwealth of the
19 Northern Mariana Islands, the Federated States of
20 Micronesia, the Republic of the Marshall Islands,
21 and the Republic of Palau; and

22 “(13) the term ‘State authorized agency’ means
23 a division or office of a State designated by that
24 State to report, receive, or disseminate criminal his-
25 tory information.

1 “(b) ESTABLISHMENT OF PROGRAM.—

2 “(1) IN GENERAL.—Not later than 180 days
3 after the date of enactment of the Child Protection
4 Improvements Act of 2009, the Attorney General
5 shall—

6 “(A) establish policies and procedures to
7 carry out the duties described in subsection (c);
8 and

9 “(B) establish a criminal history review
10 program in accordance with subsection (d).

11 “(2) ASSESSMENTS.—The Attorney General
12 shall conduct—

13 “(A) an annual assessment of each State
14 authorized agency to determine whether the
15 agency operates a qualified State program, in-
16 cluding a review of whether the State author-
17 ized agency—

18 “(i) has designated a wide range of
19 covered entities as eligible to submit State
20 criminal background check requests and
21 nationwide background check requests to
22 the State authorized agency;

23 “(ii) charges a covered entity not
24 more than a total of \$25 for a State crimi-
25 nal background check and the fee charged

1 by the Federal Bureau of Investigation for
 2 a nationwide background check; and

3 “(iii) returns requests for State crimi-
 4 nal background checks and nationwide
 5 background checks to a covered entity not
 6 later than 10 business days after the date
 7 on which the request was made; and

8 “(B) in addition to an annual assessment
 9 under subparagraph (A), an assessment de-
 10 scribed in that subparagraph of a State author-
 11 ized agency if—

12 “(i) a State authorized agency that
 13 does not have a qualified State program
 14 requests such an assessment; or

15 “(ii) the Attorney General receives re-
 16 ports from covered entities indicating that
 17 a State authorized agency that has a quali-
 18 fied State program no longer meets the
 19 standards described in subparagraph (A).

20 “(3) DESIGNEES.—The Attorney General
 21 may—

22 “(A) designate or enter into an agreement
 23 with an entity or organization that has an es-
 24 tablished history of serving the interests of chil-

1 dren to carry out or assist in carrying out the
2 duties described in subsection (c); and

3 “(B) designate or enter into an agreement
4 with 1 or more Federal, State, or local govern-
5 ment agencies to carry out or assist in carrying
6 out the criminal history review program.

7 “(c) ACCESS TO NATIONWIDE BACKGROUND
8 CHECKS.—

9 “(1) PURPOSE.—The purpose of this section is
10 to streamline the process of obtaining nationwide
11 background checks, provide effective customer serv-
12 ice, and facilitate widespread access to nationwide
13 background checks by participating entities.

14 “(2) DUTIES.—The Attorney General or the
15 background check designee shall—

16 “(A) handle inquiries from covered entities
17 and inform covered entities about how to re-
18 quest nationwide background checks—

19 “(i) for a covered entity located in a
20 State with a qualified State program, by
21 referring the covered entity to the State
22 authorized agency; and

23 “(ii) for a covered entity located in a
24 State without a qualified State program,

1 by providing information on the require-
2 ments to become a participating entity;

3 “(B) provide participating entities with ac-
4 cess to nationwide background checks on cov-
5 ered individuals in accordance with this section;

6 “(C) receive paper and electronic requests
7 for nationwide background checks on covered
8 individuals from participating entities;

9 “(D) to the extent practicable, negotiate
10 an agreement with each State authorized agen-
11 cy under which—

12 “(i) that State authorized agency shall
13 conduct a State criminal background check
14 within the time periods specified in sub-
15 section (e) in response to a request from
16 the Attorney General or the background
17 check designee and provide criminal his-
18 tory records to the Attorney General or the
19 criminal history review designee; and

20 “(ii) a participating entity may elect
21 to obtain a State criminal background
22 check, in addition to a nationwide back-
23 ground check, through 1 unified request to
24 the Attorney General or the background
25 check designee;

1 “(E) convert all paper fingerprint cards
2 into an electronic form and securely transmit
3 all fingerprints electronically to the national
4 criminal history background check system and,
5 if appropriate, the State authorized agencies;

6 “(F) collect a fee to conduct the nation-
7 wide background check, and, if appropriate, a
8 State criminal background check, and remit
9 fees to the Attorney General or the criminal
10 history review designee, the Federal Bureau of
11 Investigation, and, if appropriate, the State au-
12 thorized agencies; and

13 “(G) coordinate with the Federal Bureau
14 of Investigation, participating State authorized
15 agencies, and the Attorney General or the
16 criminal history review designee to ensure that
17 background check requests are being completed
18 within the time periods specified in subsection
19 (e).

20 “(3) REQUESTS.—A request for a nationwide
21 background check by a participating entity shall in-
22 clude—

23 “(A) the fingerprints of the covered indi-
24 vidual, in paper or electronic form;

1 “(B) a photocopy of a valid identification
2 document; and

3 “(C) a statement completed and signed by
4 the covered individual that—

5 “(i) sets out the covered individual’s
6 name, address, and date of birth, as those
7 items of information appear on a valid
8 identification document;

9 “(ii) notifies the covered individual
10 that the Attorney General and, if appro-
11 priate, a State authorized agency may per-
12 form a criminal history background check
13 and that the signature of the covered indi-
14 vidual on the statement constitutes an ac-
15 knowledgment that such a check may be
16 conducted;

17 “(iii) notifies the covered individual
18 that the signature of the covered individual
19 constitutes consent to participate in the
20 criminal history review program, under
21 which the participating entity may be in-
22 formed if the criminal history records of
23 the covered individual reveal a criminal
24 history that warrants special concern or
25 further inquiry;

1 “(iv) notifies the covered individual
2 that the covered individual shall be pro-
3 vided with a copy of the criminal history
4 records of the covered individual and shall
5 have 10 business days to review the
6 records, challenge the accuracy or com-
7 pleteness of any information in the
8 records, or withdraw consent to participate
9 in the criminal history review program be-
10 fore any information about the criminal
11 history of the covered individual is pro-
12 vided to the participating entity; and

13 “(v) notifies the covered individual
14 that prior to and after the completion of
15 the background check, the participating
16 entity may choose to deny the covered indi-
17 vidual access to children.

18 “(4) FEES.—

19 “(A) IN GENERAL.—The Attorney General
20 or the background check designee may collect a
21 fee to defray the costs of carrying out the du-
22 ties described in this subsection, the costs of
23 the Federal Bureau of Investigation and State
24 and local agencies in resolving the accuracy of
25 criminal history records of covered individuals,

1 and the duties of the criminal history review
2 designee under this section—

3 “(i) for a nationwide background
4 check and criminal history review, in an
5 amount not to exceed the lesser of—

6 “(I) the sum of—

7 “(aa) the actual cost to the
8 Attorney General or the back-
9 ground check designee of con-
10 ducting a nationwide background
11 check;

12 “(bb) the actual cost to the
13 Attorney General or the criminal
14 history review designee of con-
15 ducting a criminal history review
16 under this section; and

17 “(cc) any costs associated
18 with resolving inaccuracies, omis-
19 sions, or challenges to a covered
20 individual’s criminal history; or

21 “(II) to the extent practicable,
22 not greater than \$25 for a partici-
23 pating entity that is a nonprofit enti-
24 ty, except that the fee may be waived
25 upon a showing of hardship; or

1 “(ii) for a State criminal background
2 check described in paragraph (2)(D), in
3 the amount specified in the agreement with
4 the applicable State authorized agency, not
5 to exceed \$25.

6 “(B) PROHIBITION ON FEES.—

7 “(i) IN GENERAL.—A participating
8 entity may not charge another entity or in-
9 dividual a surcharge to access a back-
10 ground check conducted under this section.

11 “(ii) VIOLATION.—The Attorney Gen-
12 eral shall bar any participating entity that
13 the Attorney General determines violated
14 clause (i) from submitting background
15 checks under this section.

16 “(d) CRIMINAL HISTORY REVIEW PROGRAM.—

17 “(1) PURPOSE.—The purpose of the criminal
18 history review program is to provide participating
19 entities with reliable and accurate information re-
20 garding whether a covered individual has been con-
21 victed of, or has an open arrest or pending charges
22 for, a crime that may bear upon the fitness of the
23 covered individual to have responsibility for the safe-
24 ty and well-being of the children in their care.

1 “(2) REQUIREMENTS.—The Attorney General
2 or the criminal history review designee shall—

3 “(A) establish procedures to securely re-
4 ceive criminal history records from the Federal
5 Bureau of Investigation, if necessary, and from
6 State authorized agencies, if appropriate;

7 “(B) establish procedures to resolve poten-
8 tially incomplete records, under which the At-
9 torney General or the criminal history review
10 designee shall—

11 “(i) determine whether the criminal
12 history record—

13 “(I) includes an arrest—

14 “(aa) that would meet the
15 criteria described in paragraph
16 (3)(B)(ii) if it were an open ar-
17 rest; and

18 “(bb) relating to which the
19 criminal history record does not
20 indicate whether charges resulted
21 from the arrest;

22 “(II) includes a criminal
23 charge—

24 “(aa) for which a conviction
25 would meet the criteria described

1 in subparagraph (A) or (B) of
2 paragraph (3); and

3 “(bb) relating to which the
4 criminal history record does not
5 indicate any disposition of the
6 charge; or

7 “(III) includes a criminal
8 charge—

9 “(aa) that would meet the
10 criteria described in paragraph
11 (3)(B)(ii) if it were a pending
12 charge; and

13 “(bb) relating to which the
14 criminal history record does not
15 indicate any disposition of the
16 charge; and

17 “(ii) if the criminal history record in-
18 cludes an arrest or charge described in
19 clause (i), request that the Federal Bureau
20 of Investigation—

21 “(I) determine the status of any
22 such arrest or charge;

23 “(II) update the criminal history
24 record with any disposition informa-
25 tion; and

1 “(III) convey the result of the de-
2 termination and any updated record
3 to the Attorney General or criminal
4 history review designee;

5 “(C) after receiving a criminal history
6 record from the Federal Bureau of Investiga-
7 tion and, if necessary, resolving any potentially
8 incomplete information through the procedures
9 described in subparagraph (B), transmit to the
10 covered individual—

11 “(i) the criminal history records;

12 “(ii) a detailed notification of the
13 rights of the covered individual under sub-
14 section (g); and

15 “(iii) information about how to con-
16 tact the Attorney General or criminal his-
17 tory review designee for the purpose of
18 challenging the accuracy or completeness
19 of any information in the criminal history
20 record or to withdraw consent to partici-
21 pate in the criminal history review pro-
22 gram;

23 “(D) if the covered individual informs the
24 Attorney General or criminal history review des-
25 ignee that the covered individual intends to

1 challenge the accuracy or completeness of any
2 information in the criminal history record, as-
3 sist the covered individual in contacting the ap-
4 propriate persons or offices within the Federal
5 Bureau of Investigation or State authorized
6 agency;

7 “(E) make determinations regarding
8 whether the criminal history records received in
9 response to a criminal history background check
10 conducted under this section indicate that the
11 covered individual has a criminal history that
12 may bear on the covered individual’s fitness to
13 provide care to children, based solely on the cri-
14 teria described in paragraph (3);

15 “(F) unless the covered individual has
16 withdrawn consent to participate in the criminal
17 history review program, convey to the partici-
18 pating entity that submitted the request for a
19 nationwide background check—

20 “(i) which of the 3 categorizations de-
21 scribed in paragraph (3), criminal convic-
22 tion of special concern identified, further
23 inquiry recommended, or no criminal
24 records of special concern identified, apply
25 to the covered individual;

1 “(ii) information and guidance relat-
2 ing to the appropriate use of criminal his-
3 tory information when making decisions re-
4 garding hiring employees and using volun-
5 teers;

6 “(iii) if a criminal history that meets
7 the criteria set forth in subparagraph (A)
8 or (B) of paragraph (3) is found, a rec-
9 ommendation to the participating entity to
10 consult with the covered individual in order
11 to obtain more information about the
12 criminal history of the covered individual,
13 and a list of factors to consider in assess-
14 ing the significance of that criminal his-
15 tory, including—

16 “(I) the nature, gravity, and cir-
17 cumstances of the offense, including
18 whether the individual was convicted
19 of the offense;

20 “(II) the period of time that has
21 elapsed since the date of the offense
22 or end of a period of incarceration or
23 supervised release;

24 “(III) the nature of the position
25 held or sought; and

1 “(IV) any evidence of rehabilita-
2 tion; and

3 “(iv) instructions and guidance that,
4 in evaluating the considerations described
5 in clause (iii), the participating entity
6 should consult the Equal Employment Op-
7 portunity Commission Policy Statement on
8 the Issue of Conviction Records under title
9 VII of the Civil Rights Act or any suc-
10 cessor thereto issued by the Equal Employ-
11 ment Opportunity Commission;

12 “(G) if a covered individual has withdrawn
13 consent to participate in the criminal history re-
14 view program, inform the participating entity
15 that consent has been withdrawn;

16 “(H) work with the Attorney General or
17 the background check designee and the Federal
18 Bureau of Investigation to develop processes
19 and procedures to ensure that criminal history
20 background check requests are completed within
21 the time periods specified in subsection (e); and

22 “(I) serve as a national resource center to
23 provide guidance and assistance to participating
24 entities on how to interpret criminal history in-
25 formation, the possible restrictions that apply

1 when making hiring decisions based on criminal
2 histories, and other related information.

3 “(3) CRIMINAL HISTORY REVIEW CRITERIA.—
4 The Attorney General or the criminal history review
5 designee shall, in determining when a criminal his-
6 tory record indicates that a covered individual has a
7 criminal history that may bear on the fitness of the
8 covered individual to provide care to children—

9 “(A) assign a categorization of criminal
10 conviction of special concern identified if a cov-
11 ered individual is found to have a conviction
12 that would prevent the individual from being
13 approved as a foster or adoptive parent under
14 section 471(a)(20)(A) of the Social Security Act
15 (42 U.S.C. 671(a)(20)(A));

16 “(B) assign a categorization of further in-
17 quiry recommended if a covered individual is
18 found to have—

19 “(i) a conviction for a serious mis-
20 demeanor involving the same type of con-
21 duct prohibited by a felony described in
22 section 471(a)(20)(A) of the Social Secu-
23 rity Act (42 U.S.C. 671(a)(20)(A)) that
24 was committed—

1 “(I) during the 5-year period
2 ending on the date of the criminal his-
3 tory review; or

4 “(II) in the case of a crime
5 against a child, at any time; or

6 “(ii) an open arrest or pending charge
7 for a felony described in, or a serious mis-
8 demeanor involving the same type of con-
9 duct prohibited by a felony described in,
10 section 471(a)(20)(A) of the Social Secu-
11 rity Act (42 U.S.C. 671(a)(20)(A)); and

12 “(C) assign a categorization of no criminal
13 records of special concern identified for a cov-
14 ered individual that does not meet the criteria
15 described in subparagraph (A) or (B).

16 “(e) TIMING.—

17 “(1) IN GENERAL.—Unless exceptional cir-
18 cumstances apply, criminal background checks shall
19 be completed according to the time frame under this
20 subsection. The Attorney General or the background
21 check designee shall work with the criminal history
22 review designee and the Federal Bureau of Inves-
23 tigation to ensure that the time limits under this
24 subsection are being achieved.

1 “(2) APPLICATION PROCESSING.—The Attorney
2 General or the background check designee shall elec-
3 tronically submit a national background check re-
4 quest to the Federal Bureau of Investigation and, if
5 appropriate, the participating State authorized agen-
6 cy not later than 2 business days after the date on
7 which a request for a national background check is
8 received by the Attorney General or the background
9 check designee.

10 “(3) CONDUCT OF BACKGROUND CHECKS.—The
11 Federal Bureau of Investigation and, if appropriate,
12 a State authorized agency shall provide criminal his-
13 tory records to the Attorney General or the criminal
14 history review designee not later than 2 business
15 days after the date on which the Federal Bureau of
16 Investigation or State authorized agency, as the case
17 may be, receives a request for a nationwide back-
18 ground check from the Attorney General or the
19 background check designee.

20 “(4) RESOLUTION OF POTENTIALLY INCOM-
21 PLETE RECORDS.—The Attorney General or criminal
22 history review designee shall submit any request that
23 the Federal Bureau of Investigation investigate po-
24 tentially incomplete records not later than 3 busi-
25 ness days after the date on which the Attorney Gen-

1 eral or criminal history review designee receives the
2 criminal history records from the Federal Bureau of
3 Investigation or State authorized agency. Unless the
4 Federal Bureau of Investigation certifies that addi-
5 tional time is needed, the Federal Bureau of Inves-
6 tigation shall complete the investigation and provide
7 the Attorney General or criminal history review des-
8 ignee with the results of the investigation and any
9 updated criminal history records, not later than 5
10 business days after the date on which the Federal
11 Bureau of Investigation receives a request from the
12 Attorney General or criminal history designee.

13 “(5) PROVISION OF RECORDS TO COVERED IN-
14 DIVIDUALS AND OPPORTUNITY TO CHALLENGE.—
15 When the Attorney General or the criminal history
16 review designee finds that a covered individual’s
17 criminal history records fall within the categoriza-
18 tions described in subparagraph (A) or (B) of sub-
19 section (d)(3), the Attorney General or criminal his-
20 tory review designee shall provide the covered indi-
21 vidual with the criminal history records of the cov-
22 ered individual and a detailed notification of the
23 rights of the covered individual under subsection (g)
24 not later than 1 business day after the date on
25 which the Attorney General or criminal history re-

1 view designee receives a criminal history record from
2 the Federal Bureau of Investigation and, if nec-
3 essary, resolves any potentially incomplete informa-
4 tion in accordance with subsection (d)(2)(B). The
5 covered individual shall have 10 business days from
6 the date sent to challenge the accuracy or complete-
7 ness of any information in the criminal history
8 record or to withdraw consent to participate in the
9 criminal history review program.

10 “(6) CRIMINAL HISTORY REVIEWS.—Unless the
11 Federal Bureau of Investigation certifies that fur-
12 ther time is required to resolve a challenge brought
13 by a covered individual, the Attorney General or the
14 criminal history review designee shall convey to the
15 participating entity the information set forth in sub-
16 paragraph (F) or (G) of subsection (d)(2), as appro-
17 priate, 10 business days after sending the covered
18 individuals with the criminal history records of the
19 covered individual and a notification of their rights
20 under subsection (g).

21 “(f) PARTICIPATION IN PROGRAM.—

22 “(1) IN GENERAL.—The Attorney General or
23 the background check designee shall determine
24 whether an entity is a covered entity and whether

1 that covered entity should be approved as a partici-
2 pating entity, based on—

3 “(A) whether the entity is located in a
4 State that has a qualified State program; and

5 “(B) the consultation conducted under
6 paragraph (2).

7 “(2) CONSULTATION.—In determining how
8 many covered entities to approve as participating en-
9 tities, the Attorney General or the background check
10 designee shall consult quarterly with the Federal
11 Bureau of Investigation and the criminal history re-
12 view designee to determine the volume of requests
13 for national background checks that can be com-
14 pleted, based on the capacity of the criminal history
15 review program and the Federal Bureau of Inves-
16 tigation, the availability of resources, and the dem-
17 onstrated need for national background checks in
18 order to protect children.

19 “(3) PREFERENCE FOR NONPROFIT ORGANIZA-
20 TIONS.—In determining whether a covered entity
21 should be approved as a participating entity under
22 paragraph (1), the Attorney General or the back-
23 ground check designee shall give preference to any
24 organization participating in the Child Safety Pilot
25 Program under section 108(a)(3) of the PROTECT

1 Act (42 U.S.C. 5119a note) on the date of enact-
2 ment of the Child Protection Improvements Act of
3 2009 and to any other nonprofit organizations.

4 “(g) RIGHT OF COVERED INDIVIDUALS TO CHAL-
5 LENGE ACCURACY OR COMPLETENESS OF RECORDS.—A
6 covered individual who is the subject of a nationwide back-
7 ground check under this section may challenge the accu-
8 racy and completeness of the criminal history records in
9 the criminal history report as provided in subsection
10 (d)(2)(D), without submitting a separate set of finger-
11 prints or an additional fee.

12 “(h) DUTIES OF THE FEDERAL BUREAU OF INVES-
13 TIGATION.—

14 “(1) RESPONSE TO A REQUEST FOR CRIMINAL
15 BACKGROUND RECORDS.—Upon request by the At-
16 torney General or background check designee, the
17 Federal Bureau of Investigation shall conduct a na-
18 tionwide background check and provide any criminal
19 history records to the Attorney General or criminal
20 history review designee.

21 “(2) OPEN ARRESTS OR PENDING CHARGES.—
22 Upon request by the Attorney General or criminal
23 history review designee, the Federal Bureau of In-
24 vestigation shall—

1 “(A) investigate any arrest or charge de-
2 scribed in subsection (d)(2)(B)(i) with relevant
3 departments and agencies of the Federal Gov-
4 ernment and State and local governments;

5 “(B) determine the status of any such ar-
6 rest or charge;

7 “(C) update the criminal history record
8 with any disposition information; and

9 “(D) convey the result of the determina-
10 tion and any updated criminal history record to
11 the Attorney General or criminal history review
12 designee.

13 “(3) RESOLUTION OF CHALLENGES.—If a cov-
14 ered individual challenges the accuracy or complete-
15 ness of any information in the criminal history
16 record of the covered individual, the Federal Bureau
17 of Investigation, in consultation with the agency that
18 contributed the record, shall—

19 “(A) investigate the challenge with relevant
20 departments and agencies of the Federal Gov-
21 ernment and State and local governments;

22 “(B) promptly make a determination re-
23 garding the accuracy and completeness of the
24 challenged information; and

1 “(C) correct any inaccurate or incomplete
2 records.

3 “(i) AUTHORIZATION OF APPROPRIATIONS.—

4 “(1) IN GENERAL.—There are authorized to be
5 appropriated to the Attorney General for fiscal year
6 2009 through 2012 such sums as are necessary to
7 carry out the provisions of this section.

8 “(2) SENSE OF THE SENATE.—It is the sense
9 of the Senate that in fiscal year 2009, and each fis-
10 cal year thereafter, the fees collected by the Attorney
11 General or the background check designee should be
12 sufficient to carry out the duties of the Attorney
13 General or the background check designee under this
14 section and to help support the criminal history re-
15 view program.

16 “(j) COLLECTION OF DATA AND REPORT TO CON-
17 GRESS.—

18 “(1) IN GENERAL.—Not later than 1 year after
19 the date of enactment of the Child Protection Im-
20 provements Act of 2009, and annually thereafter,
21 the Attorney General shall prepare and submit to
22 Congress and make available to the public a report
23 on the programs and procedures established under
24 this Act.

25 “(2) COLLECTION OF DATA.—

1 “(A) DEFINITION OF DEMOGRAPHIC CHAR-
2 ACTERISTICS.—In this paragraph, the term ‘de-
3 mographic characteristics’ includes information
4 pertaining to race, color, ancestry, national ori-
5 gin, age, sex, and marital status.

6 “(B) COMPILING.—Beginning 90 days
7 after the date of enactment of the Child Protec-
8 tion Improvements Act of 2009, the Attorney
9 General shall compile data regarding—

10 “(i) the number and types of partici-
11 pating entities;

12 “(ii) the fees charged to participating
13 entities under this section;

14 “(iii) the time interval between na-
15 tionwide background check submissions
16 and responses under this section;

17 “(iv) the fiscal impact of this section
18 on State authorized agencies;

19 “(v) the number and demographic
20 characteristics of covered individuals sub-
21 mitting a statement described in subsection
22 (c)(3)(A)(iii) as part of a request for a na-
23 tionwide background check;

1 “(vi) the number and demographic
2 characteristics of covered individuals deter-
3 mined to have a criminal history;

4 “(vii) the number, type (including the
5 identity of the offense and whether the of-
6 fense was committed while the covered in-
7 dividual was a juvenile or adult), and fre-
8 quency of offenses, and length of the pe-
9 riod between the date of the offense and
10 the date of the nationwide background
11 check for any covered individuals found to
12 have a criminal history under this section;

13 “(viii) the procedures available for
14 covered individuals to challenge the accu-
15 racy and completeness of criminal history
16 records under this section;

17 “(ix) the number and results of chal-
18 lenges to the accuracy and completeness of
19 criminal history records under this section;

20 “(x) the number and types of correc-
21 tions of erroneous criminal history records
22 based on a challenge under this section;
23 and

24 “(xi) the number and types of inquir-
25 ies for assistance on interpreting a crimi-

1 nal history received by the criminal history
2 review program.

3 “(C) AGGREGATING DATA.—The Attorney
4 General shall—

5 “(i) aggregate the data collected
6 under this paragraph by State and city;
7 and

8 “(ii) aggregate the data collected
9 under clauses (v), (vi), and (vii) of sub-
10 paragraph (B) by race, color, ancestry, na-
11 tional origin, age, sex, and marital status.

12 “(D) REPORTS.—

13 “(i) IN GENERAL.—Not later than 1
14 year after the date of enactment of the
15 Child Protection Improvements Act of
16 2009, and annually thereafter, the Attor-
17 ney General shall prepare and submit to
18 Congress a report concerning the data
19 compiled and aggregated under this para-
20 graph.

21 “(ii) CONTENTS.—Each report sub-
22 mitted under clause (i) shall contain—

23 “(I) the data compiled and ag-
24 gregated under this paragraph, orga-
25 nized in such a way as to provide a

1 comprehensive analysis of the pro-
2 grams and procedures established
3 under this section;

4 “(II) information regarding and
5 analysis of—

6 “(aa) the programs and pro-
7 cedures established under this
8 section; and

9 “(bb) the extent such pro-
10 grams and procedures have
11 helped screen individuals who
12 may pose a risk to children; and

13 “(III) information regarding and
14 analysis of whether and to what ex-
15 tent the programs and procedures es-
16 tablished under this section are hav-
17 ing a disparate impact on individuals
18 based on race, color, ancestry, na-
19 tional origin, age, sex, or marital sta-
20 tus.

21 “(iii) RECOMMENDATIONS.—A report
22 submitted under clause (i) may contain
23 recommendations to Congress on possible
24 legislative improvements to this section.

1 “(iv) ADDITIONAL INFORMATION.—

2 Upon the request of any member of Con-
3 gress, the Attorney General shall make
4 available any of the data compiled or ag-
5 gregated under this paragraph. The Attor-
6 ney General shall not make available any
7 data that identifies specific individuals.

8 “(k) LIMITATION ON LIABILITY.—

9 “(1) IN GENERAL.—

10 “(A) FAILURE TO CONDUCT CRIMINAL
11 BACKGROUND CHECKS.—No participating entity
12 shall be liable in an action for damages solely
13 for failure to conduct a criminal background
14 check on a covered individual.

15 “(B) FAILURE TO TAKE ADVERSE ACTION
16 AGAINST COVERED INDIVIDUAL.—No partici-
17 pating entity shall be liable in an action for
18 damages solely for a failure to take action ad-
19 verse to a covered individual upon receiving any
20 notice of criminal history from the Attorney
21 General or the criminal history review designee
22 under subsection (d)(2)(F).

23 “(2) RELIANCE.—A participating entity that
24 reasonably relies on criminal history records received
25 in response to a background check under this section

1 shall not be liable in an action for damages based
2 on the inaccuracy or incompleteness of that informa-
3 tion.

4 “(3) CRIMINAL HISTORY REVIEW PROGRAM.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraphs (B) and (C), the criminal his-
7 tory review designee, including a director, offi-
8 cer, employee, or agent of the criminal history
9 review designee, shall not be liable in an action
10 for damages relating to the performance of the
11 responsibilities and functions of the criminal
12 history review designee under this section.

13 “(B) INTENTIONAL, RECKLESS, OR OTHER
14 MISCONDUCT.—Subparagraph (A) shall not
15 apply in an action if the criminal history review
16 designee, or a director, officer, employee, or
17 agent of the criminal history review designee,
18 engaged in intentional misconduct or acted, or
19 failed to act, with actual malice, with reckless
20 disregard to a substantial risk of causing injury
21 without legal justification, or for a purpose un-
22 related to the performance of responsibilities or
23 functions under this section.

24 “(C) ORDINARY BUSINESS ACTIVITIES.—

25 Subparagraph (A) shall not apply to an act or

1 omission relating to an ordinary business activ-
2 ity, such as an activity involving general admin-
3 istration or operations, the use of motor vehi-
4 cles, or personnel management.

5 “(1) PRIVACY OF INFORMATION.—

6 “(1) PROHIBITION ON UNAUTHORIZED DISCLO-
7 SURE OR USE OF CRIMINAL HISTORY RECORDS.—
8 Except for a covered individual, any entity or indi-
9 vidual authorized to receive or transmit fingerprints
10 or criminal history records under this Act—

11 “(A) shall use the fingerprints, criminal
12 history records, or information in the criminal
13 history records only for the purposes specifically
14 set forth in this Act;

15 “(B) shall allow access to the fingerprints,
16 criminal history records, or information in the
17 criminal history records only to those employees
18 of the entity, and only on such terms, as are
19 necessary to fulfill the purposes set forth in this
20 Act;

21 “(C) shall not disclose the fingerprints,
22 criminal history records, or information in the
23 criminal history records, except as specifically
24 authorized under this Act;

1 “(D) shall keep a written record of each
2 authorized disclosure of the fingerprints, crimi-
3 nal history records, or the information in the
4 criminal history records; and

5 “(E) shall maintain adequate security
6 measures to ensure the confidentiality of the
7 fingerprints, the criminal history records, and
8 the information in the criminal history records.

9 “(2) COMPLIANCE.—

10 “(A) IN GENERAL.—The Attorney General
11 shall promulgate regulations to ensure the en-
12 forcement of the nondisclosure requirements
13 under paragraph (1) and to provide for appro-
14 priate sanctions in the case of violations of the
15 requirements.

16 “(B) PARTICIPATING ENTITIES AND DES-
17 IGNEES.—The participation in any program
18 under this section by an entity or organization
19 that enters into an agreement with the Attorney
20 General to carry out the duties described in
21 subsection (c) or to carry out the criminal his-
22 tory review program shall be conditioned on the
23 person—

1 “(i) establishing procedures to ensure
2 compliance with, and respond to any viola-
3 tions of, paragraph (1); and

4 “(ii) maintaining substantial compli-
5 ance with paragraph (1).

6 “(3) DESTRUCTION OF RECORDS.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B) and subject to subsection
9 (e)(5), the Attorney General, the background
10 check designee, the criminal history review des-
11 ignee, and the covered entity or participating
12 entity—

13 “(i) shall destroy any fingerprints, ei-
14 ther in paper or electronic form, or crimi-
15 nal history record received for purposes of
16 carrying out the provisions of this Act
17 after any transaction based on the finger-
18 prints or criminal history record is com-
19 pleted; and

20 “(ii) shall after such destruction not
21 maintain the fingerprints, the criminal his-
22 tory records, or the information in the
23 criminal history record in any form.

24 “(B) REPEAT APPLICANTS.—A covered in-
25 dividual may sign a release permitting the At-

1 torney General or criminal history review des-
 2 ignee to retain the fingerprints and criminal
 3 history record of the covered individual for a
 4 period not to exceed 5 years, for the sole pur-
 5 pose of participating in the criminal history re-
 6 view program on a subsequent occasion.”.

7 **SEC. 4. EXTENSION OF CHILD SAFETY PILOT.**

8 Section 108(a)(3)(A) of the PROTECT Act (42
 9 U.S.C. 5119a note) is amended—

10 (1) by striking “78-month”; and

11 (2) by adding at the end the following: “The
 12 Child Safety Pilot Program under this paragraph
 13 shall terminate on the date that the program for na-
 14 tional criminal history background checks for child-
 15 serving organizations established under the Child
 16 Protection Improvements Act of 2009 is operating
 17 and able to enroll any organization using the Child
 18 Safety Pilot Program.”.

○